

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**(1) APMC, INC., d/b/a A PLUS  
MEDICAL OF OKLAHOMA**

**Plaintiff,**

**v.**

**(1) MICHAEL FOGARTY, Chief  
Executive Officer of the Oklahoma  
Heath Care Authority; (2) LYNN  
MITCHELL, M.D., State Medicaid  
Director; (3) KELLY SHROPSHIRE,  
Auditor for the Oklahoma Health Care  
Authority, sued in their official and  
individual capacities,**

**Defendants.**

**Case No. 5:08-CV-00249-F**

**MOTION TO STAY OF PROCEEDINGS  
AND BRIEF IN SUPPORT**

COME NOW Defendants, Lynn Mitchell, M.D. State Medicaid Director and Kelly Shropshire, Auditor for the Oklahoma Health Care Authority, named in their official and individual capacities, by and through their attorneys of record, Christopher J. Bergin and Nicole M. Nantois, and respectfully requests, pursuant to F.R.C.P. Rule 62(a)(1), that this matter be stayed pending further order of the United States Court of Appeals for the 10<sup>th</sup> Circuit and in support thereof, states as follows:

1. Defendants' have today, September 19, 2008, filed their Notice of Appeal of this Court's Order of September 12, 2008, denying Defendants' Motion to Dismiss pursuant to the Doctrine of Qualified Immunity.

2. Christopher J. Bergin has spoken with counsel for Plaintiff, Kevin

Gordon, and advises the Court Mr. Gordon is opposed to the instant Motion to Stay.

**ARGUMENT AND AUTHORITY**

The remaining Defendants' herein, Lynn Mitchell and Kelly Shropshire, named in their individual and official capacities, are entitled to a stay of these proceedings.

In *Robbins v. State of Oklahoma ex rel., Department of Human Services*, 519 F.3d 1242 (2008); the United States for the 10<sup>th</sup> Circuit recognized that, "Qualified Immunity exists to protect public officials from the broad ranging discovery that can be peculiarly disruptive of effective government. Defendants' are permitted to appeal from the denial of a Motion to Dismiss on Qualified Immunity grounds, precisely to spare them the ordeal of discovery if the complaint fails to allege constitutional violation or if the alleged violation was not clearly established."

Defendants' appeal herein is timely and jurisdiction now rests with the 10<sup>th</sup> Circuit Court of Appeals. Defendants' request for a Stay is particularly appropriate in that their answer herein has not been filed and no discovery has been undertaken.

WHEREFORE, premises considered, Defendants' respectfully requests this Court Stay the proceedings in the present action pending the ruling of the 10<sup>th</sup> Circuit Court of Appeals.

Respectfully submitted,

Howard J. Pallotta  
Director of Legal Services

<u>s/Christopher J. Bergin (OBA #13897)</u>	<u>09/19/08</u>
Signature	Date

<u>s/Nicole Nantois (OBA #16965)</u>	<u>09/18/08</u>
Signature	Date

Oklahoma Health Care Authority

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I hereby certify that on 19<sup>th</sup> day of September, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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